

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

CC Docket No. 92-77

Billed Party Preference)

InterLATA 0+ Calls)

REPLY COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

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SUMMARY

Congress, in seeking to revamp completely the existing payphone regulatory structure, has directed the Commission to implement a comprehensive new compensation system designed to foster the competitive offering of payphone services while continuing to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls. Although the Commission is pursuing these objectives through separate regulatory proceedings, it should not neglect the fundamental causal link between the two -- ensuring that all PSPs receive "fair" compensation "for each and every completed intrastate and interstate call" will limit the pressure on OSPs serving non-LEC PSPs to charge excessive rates for operator services.

Peoples, the largest non-local exchange company payphone service provider ("non-LEC PSP") in the United States, seeks to highlight this causal link by advocating the adoption of alternatives that promote competition in the payphone services marketplace while protecting consumers from unfair and deceptive business tactics. Thus, the Commission should adopt measures that will address the cause, and not the effects, of the problem. The record demonstrates support with the Commission's tentative conclusion that the establishment of benchmarks for OSP consumer rates is a viable alternative to the unwieldy BPP scheme. The questionable effectiveness of the BPP scheme, coupled with its prohibitively expensive cost, prevent it from serving as an adequate mechanism to address operator services rate issues.

There is ample evidence in the record to support the conclusion that operator services rate benchmarks, in order to effectively serve the public interest, should not be

defined in accordance with the rates assessed by the three dominant interexchange carriers. The rates charged by these carriers do not accurately reflect the costs non-LEC PSPs incur in providing and maintaining payphones. Furthermore, a benchmark rate defined according to the rates assessed by the three dominant carriers would effectively exclude these OSPs from the regulatory scheme and could constitute a violation of the Equal Protection Clause.

Instead, the Commission should adopt the benchmark rates suggested by the industry coalition (the "Coalition") in March 1995 and supported by several of the parties on the record. These benchmarks are below the general threshold level which, in a representative sampling, prompted approximately 95% of the complaints to the FCC about operator service charges. The Coalition's benchmark rate is consistent with the Commission's desire to establish a rate which reflects the consumer's willingness to pay and applies equally to all OSPs.

In conjunction with its adoption of the Coalition benchmark rates, the Commission, pursuant to the suggestion of several of the parties on the record, should forgo reliance on the costly and burdensome price disclosure requirement, and instead explore some of the alternative consumer protection mechanisms suggested by the Coalition and supported by the American Public Communications Council (APCC). One such mechanism, the LEC screening requirement, would reduce administrative costs by allowing the industry to effectively police itself.

TABLE OF CONTENTS

I.	SUMMARY OF POSITION.	1
II.	ENSURING THAT ALL PSPS AND OSPS RECEIVE FAIR COMPENSATION FOR EACH AND EVERY CALL WILL LIMIT THE PRESSURE ON OSPS SERVING NON-LEC PSPS TO CHARGE EXCESSIVE RATES ON INTERSTATE 0+ CALLS.	5
III.	THE ESTABLISHMENT OF BENCHMARK OSP RATES IS A VIABLE ALTERNATIVE TO THE BPP SCHEME.	7
IV.	THE BENCHMARK RATES SHOULD NOT BE DEFINED IN ACCORDANCE WITH THE RATES ASSESSED BY THE THREE DOMINANT INTEREXCHANGE CARRIERS.	9
V.	THE COMMISSION SHOULD ADOPT THE BENCHMARK RATES SUGGESTED BY THE INDUSTRY COALITION.	10
VI.	THE COMMISSION SHOULD ABANDON THE PRICE DISCLOSURE REQUIREMENT AND, IN ITS PLACE, ADOPT THE LEC SCREENING MECHANISM.	11
VII.	CONCLUSION.	13

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Peoples Telephone Company, Inc. submits these Reply Comments in response to the Comments filed in the Commission's Second Further Notice of Proposed Rulemaking ("Notice"). These reply comments are proffered to assist the Commission in fulfilling its mandate to establish a comprehensive national regulatory structure for domestic public payphone telephone services and, in particular, to foster the efficient provision of operator services from payphones at rates that reflect what consumers expect to pay.

I. SUMMARY OF POSITION.

Congress, in seeking to revamp completely the existing payphone regulatory structure, has directed the Commission to implement a comprehensive new compensation system designed to foster the competitive offering of payphone services¹ while continuing to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls.² Although the Commission is pursuing these objectives

¹ See 47 U.S.C. § 276(b)(1)(A). See also *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (June 6, 1996).

² See 47 U.S.C. § 226(d)(1).

through separate regulatory proceedings, it should not neglect the fundamental causal link between the two -- ensuring that all PSPs receive "fair" compensation "for each and every completed intrastate and interstate call"³ will limit the pressure on OSPs serving non-LEC PSPs to charge excessive rates for operator services.

In formulating its response to the Commission's request for alternatives to the billed party preference ("BPP") scheme, Peoples, the largest non-local exchange company payphone service provider ("non-LEC PSP") in the United States, seeks to highlight this causal link by advocating the adoption of alternatives that promote competition in the payphone services marketplace while protecting consumers from unfair and deceptive business tactics. Peoples is proud of its position as the leading national independent PSP. Despite the many challenges the Company has faced along with the rest of the non-LEC PSP industry because of the skewed economic and regulatory environment in which Peoples and others have been operating, Peoples has pursued an aggressive strategy that seeks to offer fair and reasonable end-user charges for 0+ interstate calls made from its public paystations. In this vein, in the first half of 1995, Peoples contracted with AT&T to utilize AT&T as the key national interLATA operator services provider for all of the Company's payphones. Peoples has also contracted with various of the major LECs for the provision of intraLATA/local operator services at "dominant carrier" rate levels under this same pricing strategy. As a result, Peoples has significantly reduced its interstate and intrastate non-coin revenue streams - - along with providing a significant rate reduction to consumers on 0+ calls made from Peoples' payphones.

³ 47 U.S.C. § 276(b)(1)(A).

Peoples thus urges the Commission to adopt measures that will address the cause, and not the effects, of the problem. Like several of the parties on the record,⁴ Peoples agrees with the Commission's tentative conclusion that the establishment of benchmarks for OSP consumer rates is a viable alternative to the unwieldy BPP scheme. The dramatic increase in "1-800" and "carrier access" calls suggests that the rationale motivating BPP no longer exists.⁵ Thus, the questionable effectiveness of the BPP scheme, coupled with its prohibitively expensive cost, prevent it from serving as an adequate mechanism to address operator services rate issues.

There is ample evidence in the record to support the conclusion that operator services rate benchmarks, in order to effectively serve the public interest, should not be defined in accordance with the rates assessed by the three dominant interexchange carriers (AT&T, MCI, and Sprint).⁶ Peoples' operator services rates are currently equivalent or below those charged by AT&T, and it is committed to maintaining these rates. However, unless

⁴ See, e.g. *Comments of Bell Atlantic, BellSouth, and NYNEX*, filed July 17, 1996, at 9; *Comments of Southwestern Bell Telephone Company (Southwestern Bell)*, filed July 17, 1996, at 2; *Comments of the American Public Communications Council (APCC)*, filed July 17, at 12; *Comments of the Competitive Telecommunications Association (CTA)*, filed July 17, 1996, at 20; and *Comments of U.S. West*, filed July 17, 1996, at 12.

⁵ "[T]he number of dial-around calls for which PPOs receive no compensation (e.g., subscriber 800 and debit card calls) or flat-rate, non-traffic sensitive compensation (interstate access code calls) has grown since we [the Commission] first considered the need for compensation in 1991. Subscriber 800 services, in particular, have experienced sustained growth in the past several years." *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (June 6, 1996), at 22.

⁶ See, e.g. *Comments of AT&T Corp. (AT&T)*, filed July 17, 1996, at 2-3; *Comments of the New Jersey Payphone Association (NJPA)*, filed July 17, 1996, at 16; *Comments of America's Carriers Telecommunications Association (ACTA)*, filed July 17, 1996, at 2-3; *Comments of APCC*, at 8; and *Comments of CTA*, at 14.

compensation for "1-800 subscriber" and "carrier access" and local calls is set at \$0.45, Peoples will have difficulty maintaining its rates at the current level. The rates charged by these carriers do not accurately reflect the costs non-LEC PSPs incur in providing and maintaining payphones. Furthermore, a benchmark rate defined according to the rates assessed by the three dominant carriers would effectively exclude these OSPs from the regulatory scheme and could constitute a violation of the Equal Protection Clause.

Instead, the Commission should adopt the benchmark rates suggested by the industry coalition (the "Coalition")⁷ in March 1995 and supported by several of the parties on the record.⁸ These benchmarks are below the general threshold level which, in a representative sampling, prompted approximately 95% of the complaints to the FCC about operator service charges. The Coalition's benchmark rate is consistent with the Commission's desire to establish a rate which reflects the consumer's willingness to pay and applies equally to all OSPs.

In conjunction with its adoption of the Coalition benchmark rates, the Commission, pursuant to the suggestion of several of the parties on the record,⁹ should forgo reliance on the costly and burdensome price disclosure requirement, and instead explore some of the alternative consumer protection mechanisms suggested by the Coalition and supported

⁷ See *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253 (June 6, 1996), at 8.

⁸ See, e.g. *Comments of AT&T*, at 2-3; *Comments of APCC*, at 2-3; *Comments of the CTA* at 15; and *Comments of U.S. West*, at 11.

⁹ See, e.g. *Comments of AT&T*, at 4; *Comments of MCI*, filed July 17, 1996, at 3; *Comments of U.S. West*, at 4; *Comments of Bell Atlantic, BellSouth, NYNEX*, at 4; *Comments of Southwestern Bell*, at 2-3; and *Comments of CTA*, at 17.

by the American Public Communications Council (APCC)¹⁰. One such mechanism in particular, the LEC “screening requirement”, would reduce administrative costs by allowing the industry to effectively police itself.

II. ENSURING THAT ALL PSPS AND OSPS RECEIVE FAIR COMPENSATION FOR EACH AND EVERY CALL WILL LIMIT THE PRESSURE ON OSPS SERVING NON-LEC PSPS TO CHARGE EXCESSIVE RATES ON INTERSTATE 0+ CALLS.

Congress has directed the Commission to implement a comprehensive new system designed to foster the competitive offering of payphone services¹¹ while continuing to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls.¹² While the Commission has chosen to address the question of ensuring fair compensation of PSPs for each and every intrastate and interstate call in a separate proceeding,¹³ it must recognize that the issue of rates for 0+ calls cannot be conclusively addressed in isolation.

In particular, several PSPs and OSPs charge excessive rates for operator services because there currently is no rational compensation scheme in place for the full complement of payphone generated calls. For example, “1-800 subscriber” or “carrier access” calls can account for approximately between 19.4% - 27% of total payphone traffic

¹⁰ *Comments of APCC*, at 10-11.

¹¹ *See* 47 U.S.C. § 276(b)(1)(A).

¹² *See* 47 U.S.C. § 226(d)(1).

¹³ *See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (June 6, 1996).

while generating little or no revenue.¹⁴ Thus, PSPs and OSPs are pressured to charge excessive rates for operator services calls, which only account for approximately between 2.9% - 5% of total payphone traffic,¹⁵ in order to cross-subsidize the “1-800 subscriber” and “carrier access” calls. Other parties on the record, recognizing this fundamental causal link, note that the issues of fair compensation and high rates for operator services are “intrinsically tied to each other,”¹⁶ and point out that “[i]f intrastate dial around and subscriber 800 compensation had been awarded by the Commission, it would have substantially reduced the pressure upon non-LEC payphone providers to charge higher rates.”¹⁷

Peoples supports other parties on the record who, like the Commission, advocate a comprehensive and effective approach to the issue of rates for 0+ calls.¹⁸ Peoples joins these parties in asking the Commission to formulate such an approach by examining the issue in context. In other words, the Commission can develop an effective solution to the problem of high operator service rates only by addressing the source of the problem -- lack of fair compensation for “1-800 subscriber,” “carrier access,” and local calls. Proposals which attempt

¹⁴ The 19% figure is taken from *Comments of Peoples Telephone*, filed on July 1, 1996, at 9. The 27% figure reflects data collected by the New Jersey Payphone Association from 20 “across the board” non-LEC payphone companies, ranging from the smallest to the largest, and reflects more than 1 million calls. *Comments of NJPA*, at 13-14.

¹⁵ The 2.9% figure is from *Comments of NJPA*, at 13-14. The 5% figure is from *Comments of Peoples Telephone*, at 9.

¹⁶ *Comments of NJPA*, at 7.

¹⁷ *Id.*

¹⁸ *Id.*; see also *Comments of APCC*, at 9 (“Unless and until the Commission successfully addresses the compensation problem, the pressure on PSPs to gain revenue from interstate 0+ calls because sufficient revenue cannot be gained on other calls will not be substantially relieved[.]”)

to merely address the effects, and not the cause, of the problem will prove inadequate and ineffective.

III. THE ESTABLISHMENT OF BENCHMARK OSP RATES IS A VIABLE ALTERNATIVE TO THE BPP SCHEME.

Peoples agrees with the Commission, and the several of the parties on the record,¹⁹ in concluding that the costs of the BPP scheme are likely to be quite substantial and that the public interest is best served by the implementation of some alternative mechanism. Conservative cost estimates, including those undertaken by the Commission,²⁰ predict that the cost of the BPP scheme is likely to be over \$1 billion. Other studies estimate higher costs.²¹ Although the Commission believes that this cost will decrease as local number portability develops, the record suggests otherwise.²² This prohibitive expense, along with the delay and technological difficulty associated with the scheme, suggest that “the time for BPP has come and gone and the issue should now be closed.”²³

¹⁹ See, e.g. *Comments of Bell Atlantic, BellSouth, and NYNEX*, filed July 17, 1996, at 9; *Comments of Southwestern Bell*, at 2; *Comments of APCC*, at 12; *Comments of CTA*, at 20; and *Comments of U.S. West*, at 12.

²⁰ *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253 (June 6, 1996), at 6.

²¹ See Strategic Policy Research, *Quantifying the Costs of Billed Party Preference*, submitted by APCC, Sept. 14, 1994.

²² “The network design now expected to be used for LNP [local number portability] involves a different database solution and query type than that needed for BPP. The two systems would be incompatible in structure and function.” *Comments of Southwestern Bell*, at 2. See also *Comments of APCC*, at 12, n. 12 (“The Commission cites no evidence supporting its speculation that implementation of local service number portability might somehow, eventually, render BPP cost-beneficial.”).

²³ *Comments of Southwestern Bell*, at 2.

The dramatic increase in “1-800 subscriber” and “carrier access” calls strengthens this conclusion.²⁴ When it introduced the BPP concept in April 1992, the Commission was motivated by concerns that consumers were having great difficulty in reaching their carrier-of-choice when using operator services.²⁵ Since the number of “1-800 subscriber” and “carrier access” calls has increased, it appears that consumers are no longer having such difficulties. Since the concerns prompting BPP no longer exist, the scheme should be abandoned.

Furthermore, the BPP scheme not only fails to address the source of the operator service rates problem, but actually exacerbates the problem. As the record indicates, the Commission’s BPP proposal increases the risk premium OSPs encounter by threatening the viability of operator services as a stand-alone business.²⁶ Investors, demanding a higher premium on their investment, make it more difficult for OSPs to access capital and thereby increase their debt servicing and equity costs. Aggregators, confronted with the possibility that the BPP scheme may be implemented within two to three years, have begun to demand a higher commission from OSPs to recover their costs. Such difficulties and demands place increased pressure upon the OSPs to increase rates on operator service calls. In light of this

²⁴ “[T]he number of dial-around calls for which PPOs receive no compensation (e.g., subscriber 800 and debit card calls) or flat-rate, non-traffic sensitive compensation (interstate access code calls) has grown since we [the Commission] first considered the need for compensation in 1991. Subscriber 800 services, in particular, have experienced sustained growth in the past several years.” *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 96-254 (June 6, 1996), at 22.

²⁵ *In the Matter of Billed party Preference for 0+ InterLATA Calls*, Notice of Proposed Rulemaking, CC Docket No. 92-77, 7 FCC Rcd 3027, 3030 (1992).

²⁶ *Comments of CTA*, at 22.

circuitous reaction, the Commission ought to expressly reject the BPP scheme and begin addressing the source of the operator service rates problem.

IV. THE BENCHMARK RATES SHOULD NOT BE DEFINED IN ACCORDANCE WITH THE RATES ASSESSED BY THE THREE DOMINANT INTEREXCHANGE CARRIERS.

Consistent with the overwhelming evidence on the record, the Commission should not define the benchmark OSP rates in accordance with those charged by the three dominant interexchange carriers (AT&T, MCI, and Sprint).²⁷ The rates charged by these carriers do not accurately reflect the costs non-LEC PSPs incur in providing and maintaining payphones and, in many cases simply do not allow payments to PSPs to provide these calls. The three dominant interexchange carriers do not operate payphones, and thus, their operator services rates do not reflect the cost of maintaining or providing such facilities. By using the rates charged by the three dominant carriers as the benchmark, the Commission will prevent smaller carriers from recovering their costs, and could force such carriers out of the market. Perversely, then, the Commission could actually stifle competition through a measure designed to promote it.

Any argument in favor of establishing benchmark rates based upon the rates assessed by the three dominant carriers misreads the source of the operator services rate problem. OSPs are not monopolists who utilize their leveraged positions to extract high profits. Rather, they are non-dominant market participants who are forced to cross-subsidize “1-800 subscriber” and “carrier access” calls by recovering costs from end users through high operator services rates.

²⁷ See, e.g. *Comments of AT&T*, at 2-3; *Comments of NJPA*, at 16; *Comments of ACTA*, at 2-3; *Comments of APCC*, at 8; and *Comments of CTA*, at 14.

Furthermore, a definition of benchmark rates based upon the rates of the three dominant carriers would effectively exclude these carriers from the regulatory scheme. MCI could, for example, raise its operator services rate and still fall within a benchmark rate which is, by definition, a by-product of its own rate. However, any OSP which is not among the top three might be unable to raise its operator services rates. The establishment of such benchmark rates would lead not only to increased dominance by the three largest interexchange carriers, but could also constitute a violation of the Equal Protection Clause.²⁸

V. THE COMMISSION SHOULD ADOPT THE BENCHMARK RATES SUGGESTED BY THE INDUSTRY COALITION.

The benchmark rates suggested by the Coalition in March 1995 are below the general threshold level which, in a representative sampling, prompted approximately 95% of the complaints to the FCC about operator service charges. There is ample evidence in the record to suggest that the Commission should adopt the Coalition's benchmark rates.²⁹ The Coalition's benchmark rates, unlike those based upon the rates of the three dominant carriers, reflect the widely varying costs of the OSP industry.³⁰ As AT&T points out, the benchmark rates "should be based upon a statistical sampling of the rates of all OSPs[,] "³¹ rather than the rates of the dominant interexchange carriers. By establishing benchmark rates which reflect an

²⁸ The Equal Protection Clause directs that "all persons [individuals and corporations] similarly circumstanced shall be treated alike." *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 562 (1920).

²⁹ See, e.g. *Comments of AT&T*, at 2-3; *Comments of APCC*, at 2-3; *Comments of the CTA* at 15; and *Comments of U.S. West*, at 11.

³⁰ See *CompTel Comments*, filed April 12, 1995, at 8.

³¹ *Comments of AT&T*, at 2.

OSPs actual costs (which include increased costs for billing, collection, and validation services), the Commission is addressing the source of the operator services rate problem.

The Commission, seeking to establish benchmark rates which are “based on the reasonable expectations of consumers,”³² should readily accept those provided in the Coalition’s suggestion. The Coalition’s benchmark rates were compiled through a process which evaluated the willingness of consumers to pay particular intrastate rates and associated charges for operator services. Underlying the Coalition’s benchmark rates schedule is the basic assumption that consumers complain when operator services charges are in excess of their reasonable expectations. This assumption, and not one which posits that consumers expectations are based upon the charges assessed by the three dominant carriers, ought to be adopted by the Commission.

VI. THE COMMISSION SHOULD ABANDON THE PRICE DISCLOSURE REQUIREMENT AND, IN ITS PLACE, ADOPT THE LEC SCREENING MECHANISM.

The record contains overwhelming evidence indicating that the price disclosure requirement discussed in the Notice would place undue burdens on consumers while imposing tremendous costs on OSPs.³³ The record convincingly indicates that consumers would actually be hindered, not helped by the disclosure requirement.³⁴ The requirement would “add to the delay and inconvenience associated with completing an operator services call[,]” rather than

³² *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253 (June 6, 1996), at 14.

³³ *See, e.g. Comments of AT&T*, at 4; *Comments of MCI*, at 3; *Comments of U.S. West*, at 4; *Comments of Bell Atlantic, BellSouth, NYNEX*, at 4; *Comments of Southwestern Bell*, at 2-3; and *Comments of CTA*, at 17.

³⁴ *See e.g., Comments of CTA*, at 19-20; *Comments of Southwestern Bell*, at 3; and *Comments of APCC*, at 4.

assisting consumers.³⁵ As MCI indicates, the disclosure requirement “would significantly increase the burden on OSPs . . . without significantly improving the protection afforded to consumers[.]”³⁶

Contrary to the Commission’s assumption,³⁷ the record evidences that OSPs could not easily provide real-time rate information.³⁸ The technology capable of providing such information would have to contain over 500 separate combinations of rate factors³⁹ and would be extremely costly to develop. Furthermore, the disclosure, by adding between five to ten seconds of set-up time to each call, would increase the percentage of calls that are abandoned prior to completion, and would, therefore, further decrease OSP revenue.⁴⁰ This increase in cost and decrease in revenue flowing from a disclosure requirement will actually exacerbate the cause of the operator services rate problem (by creating additional pressures on OSPs to increase rates) instead of effectively addressing it. Many OSPs who face increasing costs and declining revenues will be forced out of the market, and the payphone service market and consumers will suffer from stifled competition.

³⁵ *Comments of APCC*, at 4.

³⁶ *Comments of MCI*, at 3.

³⁷ *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253 (June 6, 1996), at 19-20.

³⁸ *Id.* at 17-18.

³⁹ *Id.* at 15-16.

⁴⁰ It is also important to note that the Commission’s proposed disclosure requirements are discriminatory in the sense that they appear to require disclosure on 0+ calls but not “carrier access” calls.

Like APCC,⁴¹ Peoples urges the Commission to examine mechanisms such as the LEC screening process, which work to reduce administrative costs and allow the industry to police itself. A LEC screening process, similar to the successful process used in California by Pacific Telesis, could be utilized to enforce compliance with the benchmark rates established by the Commission without requiring the FCC to expend additional resources.

VII. CONCLUSION.

In attempting to ensure that OSPs do not charge high rates for operator services calls, the Commission must recognize that many PSP's utilize OSPs that charge high operator services rates because they are not adequately compensated for "1-800 subscriber," "carrier access," or local calls. Recognition of this fundamental causal link should lead the Commission to undertake measures which will address the cause, not the effects, of the problem. Such an undertaking involves explicitly rejecting the BPP scheme and implementing the benchmark rate schedule suggested by the Coalition. In order to enforce compliance with

⁴¹ *Comments of APCC*, at 10-11.

this schedule, the Commission should institute the less costly, highly effective LEC screening mechanism.

Respectively submitted,
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August 16, 1996

CERTIFICATE OF SERVICE

I Andrea Rainey hereby certify that I have this 16th day of August, 1996 caused copies of the foregoing "Comments of Peoples Telephone Company, Inc." to be served by hand on the following:

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